The court went even farther and said that the declaration of the sovereign that the vessel was public "cannot be inquired into." In *The "Davis,"* 10 Wall. (U. S.), 15, an action in rem was allowed against a shipment of cotton, the property of the United States, on board a private vessel, since the property was not in the possession of the United States and process would not have to be issued against it. C. H. Weston in an article in 32 HARV. LAW REV., called "Actions Against the Property of Sovereigns" (Jan. 1919), at p. 266, assails the "possession" test and suggests the test of public purpose. He brings an analogy from the law of municipal corporations whose property is not exempt when owned for profit but is exempt when charged with a public purpose, viz., hospitals, fire engines, etc. No issue can be taken with the proposition that the property of the sovereign which is charged with a public purpose should be exempt from local process. But if he means to make the local courts the judges of the public purposes of sovereigns there can be no approval. The inevitable and accepted view is presented in Weston's paraphrase of the holdings of the courts on this question: "Sovereign authority would shrink to small proportions if not permitted to determine what uses of its property are public. To inquire into the use of property declared by a foreign sovereign to be public would be to flout the dignity of sovereignty which the courts have declared entitled to respect." It may be added that it would not only flout the dignity of sovereignty but would also "endanger the performance of the public duties of the sovereign." *Briggs* v. *Lightboats,* 93 Mass. (11 Allen) 157. The court in the principal case, however, attempts to include the case within the rule of *The "Davis,"* supra, by saying that the officers and crew became for the time being "the sovereign's instrumentalities and whatever possession of the ship they obtained by reason of this employment was the sovereign's possession while the requisition was in force." This reasoning is hardly necessary if the sovereign once declares the ship bound on a public purpose. But the decision is correct and the general principles governing it are unquestionably sound. See also *Vavasseur* v. *Krupp,* 9 Ch. D. 351; *The "Exchange,"* 11 U. S. (7 Cranch) 116; *The "Broadmayne,"* L. R. [1916] Prob. Div. 64.

NEGLIGENCE—SUBCONTRACTOR'S DUTY TO MAINTAIN SAFE CONDITIONS—INJURIES TO THIRD PERSONS.—Defendant had a contract with a building corporation to install the ornamental iron work in a certain building. This included the installation of the steel work of the inside stairways exclusive of the marble treads which were necessary to make the stairway complete. The proof showed that it was the universal custom as the construction progressed to use these staircases with the iron tread for workmen going up and down the building; and that the defendant had full knowledge of such actual use in this building. An employee of another contractor doing masonry work upon the building stepped upon a tread of one of these stairs, which fell by reason of the fact that it had not been properly bolted as it should have been. The action is for resulting injuries due to the alleged negligence of the defendant. *Held,* that the plaintiff could not recover because the defendant owed him no duty to make the stairway safe. "The

obligation did not rest upon the defendant to produce a stairway safe for travel, but merely that portion of a stairway which, when compelted by the work of someone else, would be a safe means of travel." Smith and Clarke, J. J., (*dissenting*) held that the defendant owed a duty to those who to his knowledge would make use of the stairway. *Brady* v. *Claremont Iron Works* (Supreme Ct. of New York, App. Div., Jan. 1919), 174 N. Y. Supp. 64.

In *Heaven* v. *Pender,* Ct. of Appeal, 11 Q. B. D. 503, an opposite conclusion was reached under facts materially similar to those in the principal case. The defendant, a dock owner, under a contract with a ship owner, supplied a stage to be slung outside the ship for the purpose of painting. The contractee's employee was allowed a recovery against the dock owner for injuries caused by the breaking of a defective rope. The defendant had no actual knowledge that the platform would be used by the plaintiff but the court concluded that he "must have known" if the matter had been considered at all. The court refused to limit the defendant's duty to the parties to the contract. The court said: "If a person contracts with another to use ordinary care or skill toward him or his property the obligation need not be considered in the light of a duty; it is an obligation of contract. It is undoubted, however, that there may be the obligation of such a duty from one person to another although there is no contract between them with regard to such duty * * * the existence of a contract between two persons does not prevent the existence of the suggested duty between them also being raised by law, independently of the contract, by facts in regard to which the contract is made and to which it applies an exactly similar but not a contract duty." In a word, the existence of a contract duty does not preclude the existence of a duty ex delicto contemporaneous with it and covering the same or a broader field. The rule laid down by the court is, indeed, a reasonable one: "Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger." The same rule is expressed in *Sweeny* v. *Old Colony Ry.,* 10 Allen (Mass.) 368, 377. In the principal case the duty to the plaintiff seems clear. The knowledge of the future use imposed upon the defendant a duty to construct an uncompleted stairway as safe as an uncompleted stairway of that type should be—especially since no greater burden was imposed than that which the contract with the building corporation imposed, namely that due care be exercised in the construction of the stairway. The case would have been easily covered by the principle laid down in *McPherson* v. *Buick Motor Co.,* 217 N. Y. 382, decided in the Court of Appeals in the same jurisdiction. See also *Huset* v. *Case Threshing Machine Co.,* 120 Fed. 865; *Schubert* v. *Clark,* 49 Minn. 331, and the cases discussed in the opinions of the principal case.

NEGOTIABLE INSTRUMENTS—LIABILITY OF DRAWER OF BLANK CHECK.—Plaintiff signed a check made out by his confidential clerk. At the time, it